

ACT No. I OF 1878.¹

[9th January, 1878.]

An Act to amend the law relating to Opium.

[As modified up to the 1st March, 1903.]

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:— Preamble.

1. This Act may be called the Opium Act, 1878; Short title.

It shall extend to such local areas² as the Governor General in Council may, by notification in the Gazette of India, from time to time direct; Local extent.

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf. Commencement.

2. [*Repeal and amendment of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of*

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 645; for Proceedings in Council, see *ibid*, Supplement, pp. 3015 and 3030; *ibid*, 1878, pp. 53 and 80.

The Act has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (III of 1872), s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899); in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, Baluchistan Code, Ed. 1900, p. 60; and in the Angul District by the Angul District Regulation, 1894 (I of 1894), s. 3.

It has been declared in force in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (1), Sch. I, Burma Code, Ed. 1899.

² It has been extended by notification in the Gazette of India to the following local areas from the date specified against each:—

the United Provinces of Agra and Oudh, from 2nd February, 1878, see Gazette of India, 1878, Pt. I, p. 68;

the Bombay Presidency, from 1st April, 1878, see *ibid*, p. 231;

Bengal, from 21st August, 1878, see *ibid*, p. 526;

Lower Burma, from 29th March, 1879, see *ibid*, 1879, Pt. I, p. 75;

Assam, from 1st April, 1879, see *ibid*, p. 259;

the Central Provinces, from 28th June, 1879, see *ibid*, p. 441.

Ajmer-Merwara, from 2nd August, 1879, see *ibid*, p. 466;

the Punjab, from 1st April, 1880, see *ibid*, 1880, Pt. I, p. 16;

the Madras Presidency, from 1st July, 1880, see *ibid*, p. 513; and

Coorg, from 1st April, 1882, see *ibid*, 1882, Pt. I, p. 135.

Ss. 3-5 and 9-16 have been extended under s. 10 (1) of the Burma Laws Act, 1898 (XIII of 1898) to the Myelat, see Burma Gazette, 1900, Pt. I, p. 477, and the whole Act, with the exception of ss. 6-8 and 22-25, has been extended to the Taunggyi Civil Station of the Southern Shan States and the Lashio Civil Station of the Northern Shan States, respectively, with certain modifications, see Burma Gazette, 1900, Pt. I, pp. 478 and 799, respectively.

of 1891), and the *Repealing and Amending Act, 1894* (IV of 1894.)

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“opium” includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy :

“Magistrate”¹ means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class :

“import” means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

“export” means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government :

“transport” means to remove from one place to another within the territories administered by the same Local Government.

Prohibition
of poppy-
cultivation
and posses-
sion, etc., of
opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

- (a) cultivate the poppy ;
- (b) manufacture opium ;
- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

Power to
make rules

5. The Local Government, with the previous sanc-
tion

¹ Cf. definition in the last clause of s. 3 of the Code of Criminal Procedure, 1898 (V of 1898), as modified up to the 1st April, 1900, published by the Legislative Department.

(Section 5.)

tion of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules ¹ consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

to permit such matters.

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;
- (c) the possession of opium ;
- (d) the transport of opium ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs

¹ For rules made under this section for—

- (1) Ajmer-Merwara, *see* Gazette of India, 1901, Pt. II, p. 325.
- (2) Assam, *see* Notification No. 699 R., dated the 21st February, 1899, Assam Gazette, 1899, Pt. II, p. 86.
- (3) British Baluchistan, *see* Gazette of India, 1898, Pt. II, p. 121.
- (4) Bengal, *see* Calcutta Gazette, 1898, Pt. I, pp. 195 and 1321, amended *ibid*, 1901, Pt. I, p. 223.
- (5) Bombay, *see* Bombay List of Local Rules and Orders, pp. LI to LIII, Vol. I, Ed. 1896, and Bombay Government Gazette, 1897, Pt. I, p. 1084, and *ibid*, 1901, Pt. I, p. 148 and *ibid*, 1903, Pt. I, p. 134.
- (6) Burma, *see* Burma Excise Manual, Ed. 1895.
- (7) the Central Provinces, *see* Central Provinces Gazette, 1898, Pt. III, p. 86, and *ibid*, 1901, p. 380.
- (8) Coorg, *see* Coorg District Gazette Extraordinary, dated 15th February, 1898, p. 2.
- (9) Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 110 ; and Fort St. George Gazette, 1901, Pt. I, p. 431.
- (10) the United Provinces of Agra and Oudh, *see* North-Western Provinces and Oudh Gazette, 1898, Pt. I, p. 562, amended North-Western Provinces and Oudh Gazette, 1901, Pt. I, p. 211, and *ibid*, 1901, Pt. I, p. 528.
- (11) the Punjab, *see* Punjab Gazette, 1900, Pt. I, p. 892 ; *ibid*, 1901, Pt. I, p. 532, and *ibid*, Pt. III, pp. 1150 and 1151.
- (12) the Myelat in conjunction with ss. 3, 12, 13 and 14, *see* Burma Gazette 1900, Pt. I, p. 477.
- (13) the civil stations of Taunggyi and Lashio and s. 13, *see* Burma Gazette, 1900, Pt. I, pp. 478 and 799, respectively.

sea-customs¹ for the time being in force or under section 6.

Duty on
opium im-
ported by
land.

6. The Governor General in Council may, from time to time, by notification in the Gazette of India,² impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing
opium.

7. The Governor General in Council may, by order notified in the Gazette of India,—

(a) authorize any Local Government to establish warehouses,³ for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the
owner

¹ See the Sea Customs Act, 1878 (VIII of 1878) (Chapter VIII) General Acts, Vol. III.

² For notifications issued under this section, see Gazette of India, 1894, Pt. I, p. 657; *ibid*, 1895, p. 834, and *ibid*, 1896, pp. 146 and 570 and *ibid*, 1900, p. 454 (exempting poppy-heads imported into the Punjab.)

³ For notification authorizing the Government of Bombay to establish a warehouse under this section, see List of Bombay Local Rules and Orders, Vol. I, Ed. 1896, p. LV.

owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Power to make rules relating to warehouses.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

Penalty for illegal cultivation of poppy, etc.

(a) cultivates the poppy, or

(b) manufactures opium, or

(c) possesses opium, or

(d) transports opium, or

(e) imports or exports opium, or

(f) sells opium, or

(g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium

Presumption in prosecutions under section 9.

for

(Sections 11-12.)

for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation
of opium.

11. In any case in which an offence under section 9 has been committed,—

- (a) the poppy so cultivated,
- (b) the opium in respect of which any offence under the same section has been committed,
- (c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,
- (d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of
confiscation
by whom to
be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing
liable

liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules¹ consistent with this Act to regulate—

Power to make rules regarding disposal of things confiscated, and rewards.

(a) the disposal of all things confiscated under this Act; and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

(a) enter into any such building, vessel or place;

(b) in

¹ See List of rules noted under s. 5, *supra*, which were made also under the powers conferred by this section.

(Sections 15-18.)

- (b) in case of resistance, break open any door and remove any other obstacle to such entry;
- (c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and
- (d) detain and search, and, if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to
seize opium
in open
places.

15. Any officer of any of the said departments may—

- (a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;
- (b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to
detain, search
and arrest.

Searches how
made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1882¹.

X of 1882.

Officers to
assist each
other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious
entries,
searches,
seizures and
arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters

OR

¹ See now the Code of Criminal Procedure, 1898 (V of 1898), as modified up to the 1st April, 1900, published by the Legislative Department.

or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

19. The Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

Issue of warrants.

X of 1882. All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882¹.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Disposal of person arrested or thing seized.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full

Report of arrests and seizures.

report

¹ See now the Code of Criminal Procedure, 1898 (V of 1898), as modified up to the 1st April, 1900, published by the Legislative Department.

(Sections 22-24.)

report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy cultivation.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII of 1857¹ (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*), or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue,²

and

¹ N.-W. P. and Oudh Code, Ed. 1892, p. 93; and Central Provinces Code, Ed. 1891, p. 23.

² See the Revenue Recovery Act, 1890 (I of 1890), General Acts, Vol. V.

and shall pay any amount so recovered to the applicant :

Provided that the execution of any process issued by such Collector, Deputy Commissioner¹ or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

IX of 1872. 25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872,² section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

Recovery of penalties due under bond.

SCHEDULE.

[ENACTMENT REPEALED.]

Repealed by Act XII of 1891.

¹ "Deputy Commissioner" was substituted for "Deputy Collector" by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II, General Acts, Vol. VI.

² General Acts, Vol. II.